



UNITED STATES DEPARTMENT OF COMMERCE  
Economic Development Administration  
Washington, D.C. 20230

JUL 11 1991

Norman Niedergang, Director  
Office of Superfund  
U.S. Environmental Protection Agency  
Region 5  
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(312) 886-4071

VIA FACSIMILE  
AND FIRST CLASS MAIL

EPA Region 5 Records Ctr.



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VIA FACSIMILE  
AND FIRST CLASS MAIL

Re: Wisconsin Steel Works

Dear Mr. Niedergang and Mr. Ingersoll:

This letter concerns the negotiation of a Memorandum of Understanding ("MOU") between the Department of Commerce, Economic Development Administration ("DOC/EDA"), the U.S. Environmental Protection Agency, Region 5 ("USEPA") and the Illinois Environmental Protection Agency ("IEPA"). This letter is intended to respond to Mr. Niedergang's letter of June 18, 1991 and to accept the terms outlined in Mr. Ingersoll's letter of March 4, 1991.

DOC/EDA is concerned from Mr. Niedergang's letter that there may be certain misunderstandings about the MOU process. In order to clarify the history of the MOU process, let me review the following. DOC/EDA first approached USEPA about cooperation in a CERCLA cleanup in mid 1989. It was suggested that an Interagency Agreement ("IAG") was the proper format for a tripartite agreement with USEPA, IEPA and DOC/EDA, and USEPA agreed to prepare and circulate such a draft. In June, 1990 USEPA circulated such a draft. After further review and discussion among the parties, however, it became apparent to all that an IAG was an inappropriate vehicle for a tripartite agreement, given that DOC/EDA has extraordinary powers respecting the remediation of the Wisconsin Steel Works under Executive Order 12580. As a result of this mutual conclusion,

DOC/EDA prepared and circulated in October, 1990, the first draft of an MOU which reflected DOC/EDA's proper role as a lead agency pursuant to Executive Order 12580. After reviewing the draft, all parties met in January, 1991 to discuss the MOU. DOC/EDA agreed to circulate a redraft of the MOU by March 15, 1991 to reflect the comments and accommodate the positions of USEPA and IEPA at the January meeting. USEPA also agreed to provide certain suggested language for the revised MOU, language which DOC/EDA has not received. DOC/EDA was not able to meet the March 15 suggested date, both as a result of non-receipt of the anticipated items and as a result of a shift from DOC/EDA's use of Argonne National Laboratory to the U.S. Army Corps of Engineers (the "Corps").

To correct any misimpression regarding DOC/EDA's commitment to the CERCLA process, let me bring you up to date on the status of DOC/EDA's actions in furtherance of its responsibilities regarding the Wisconsin Steel Works. Firstly, DOC/EDA is now and has always been fully committed to clean up the Wisconsin Steel Works and has always sought the support of both USEPA and IEPA in this effort. Since 1989 DOC/EDA has expended the equivalent of \$6.8 million toward site cleanup, including the demolition of structures, removal of debris and research into site conditions. In April, 1991 DOC/EDA entered into a Memorandum of Agreement with the Corps whereby the Corps agreed to conduct a remediation of the site. Certain situations at the site have been denominated by the Corps as potentially hazardous and the Corps has proceeded to secure those situations. The Corps has begun scoping for the Remedial Investigation/Feasibility Study ("RI/FS") and expects to begin with the actual RI/FS in October, 1991.

DOC/EDA understands USEPA's position to be that USEPA will not enter into an MOU unless three conditions are met: (1) the final decision on choice of remedy is delegated to USEPA, (2) DOC/EDA agrees to stipulated fines and penalties, and (3) USEPA has the final say in dispute resolution. DOC/EDA understands IEPA's position to be that IEPA will not enter into any sort of tripartite MOU that is not clearly enforceable. DOC/EDA believes several of these conditions to be contrary to the position of the Department of Justice as well as contrary to the delegation of authorities under Executive Orders 12580 and 12088. Regrettably, DOC/EDA cannot commit to enter into a tripartite MOU along the lines described in this paragraph.


DOC/EDA is, nonetheless, extremely desirous of securing the expertise and experience of both agencies during the cleanup of the Wisconsin Steel Works. Mr. Ingersoll suggested in his letter a service agreement, setting up an arrangement whereby DOC/EDA would reimburse IEPA for its actual costs of reviewing DOC/EDA's submittals. DOC/EDA is willing to enter into such an arrangement to secure the expertise of IEPA and will call shortly to negotiate the final terms of the agreement.

DOC/EDA desires to enter into a similar arrangement with USEPA whereby DOC/EDA will reimburse USEPA for the expense of reviewing DOC/EDA's submittals. I gather that Roger Grimes in a telephone conference on Wednesday June 26, 1991 indicated to Kathleen Carver and Michelle Barczak that he did not believe that USEPA would be interested in such an arrangement. That position is regrettable as DOC/EDA understands that under Executive Order 12088 §1-301, USEPA is required to provide technical advice and assistance to executive agencies to ensure cost effective and timely compliance with environmental laws and regulations. By implication both the National Contingency Plan and §11(f) of Executive Order 12580 similarly contemplate that USEPA will provide technical support to sister agencies. DOC/EDA is willing to reimburse USEPA for its actual cost of reviewing submittals and remains open to such an arrangement with USEPA.

DOC/EDA's attorneys or I will contact Mr. Ingersoll within the next week to arrange for a service agreement with IEPA along the lines suggested by IEPA. DOC/EDA remains available to discuss a similar arrangement with USEPA. Regardless of whether an agreement is reached, DOC/EDA intends to make submittals to USEPA and to solicit USEPA's comments. If I do not hear from USEPA I must assume that this proposal for a service agreement has been rejected.

I look forward to hearing from you.

Very Truly Yours,

  
Michael S. Oberltner, Director  
Liquidation Division